

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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:
JOSEPH STEVENS & COMPANY, INC., :
Plaintiff, : 07 CV 3385 (BSJ)
:
-against- :
:
DAVID CIKANEK, :
:
Defendant. :
:
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**DECLARATION OF ALISON B. COHEN IN FURTHER SUPPORT OF MOTION TO
VACATE ARBITRATION AWARD AND IN OPPOSITION TO RESPONDENT'S
CROSS-MOTION TO DISMISS FOR LACK OF PERSONAL JURISDICTION**
EXHIBIT A

1 did you have any type of brokerage accounts
2 that you remember?

3 A. No.

4 Q. Did you ever purchase or invest in
5 stocks?

6 A. No, not that I -- no.

7 Q. Now, did something change around 1985
8 with regard to your savings, your investments?

9 A. Yes, well, I accumulated a substantial
10 amount of money in my savings and CDs, these
11 CDs -- the economy brought down the interest
12 rate and they weren't paying like they did, so
13 there was a lot of talk of mutual funds and how
14 safe they were and diversified and I heard of
15 the Magellan account at Fidelity, so I opened
16 up an account there.

17 Q. You opened an account at Fidelity?

18 A. Yes.

19 Q. Did you transfer money over there?

20 A. Yes.

21 Q. Now, what was the basic nature of --
22 what was your investment objectives, what were
23 you -- how did you invest your money when you
24 were at Fidelity?

25 A. To put it in safe accounts and

1 left -- well, I assumed she left an equal
2 amount to everyone and I received \$15,000.

3 Q. Was that also part of the money that
4 you had invested at Fidelity?

5 A. Yes.

6 Q. I'd like to show you, if you could turn
7 to exhibit -- tab 19 in volume number 2 of
8 claimants exhibit binder, I'd like you to take
9 a look at that document and tell me, if you
10 could, tell us what that is?

11 A. 1999 investment report from
12 January 1st, '99, to December 31st, '99.

13 Q. So, now, is it your understanding that
14 this reflects the value of your Fidelity
15 portfolio at the end of -- as of December 31,
16 1999?

17 A. Yes.

18 Q. And what was the total net -- you had
19 two account -- appears three accounts there, is
20 that correct, two general investment accounts
21 and one retirement account?

22 A. Yes.

23 Q. And what was the net value as of
24 December 31st, 1999?

25 A. \$788,182.47.

1 A. Approximately six months. She died
2 May 21st, 2000.

3 Q. So it was during this period of time
4 that Ross Inserra you said was calling about
5 transferring your entire account over?

6 A. Yes.

7 Q. And was it during this time that you
8 ultimately did transfer your account over?

9 A. Yes.

10 Q. So did you -- when you made that
11 decision, did you retain anything at Fidelity?

12 A. No, I transferred the whole portfolio.

13 Q. The IRA and the individual account?

14 A. The IRA and the individual account.

15 Q. Now, once the accounts got over to
16 Silver Capital, how were they handled, how were
17 they being invested -- let me back up. I'm
18 sorry, I withdraw the question.

19 When your accounts transferred over,
20 you transferred them over to Silver Capital,
21 did you have any discussion with Mr. Ross
22 Inserra or Lenny Inserra or Kevin Brody about
23 the handling of your accounts?

24 A. Yes, before I even sent the account, I
25 told Ross I cannot lose this money. This is my

1 over to Silver Capital, do you recall how they
2 performed?

3 A. At first, I thought they were safe but
4 then I learned that he liquidated the account
5 right away and then I was alarmed at that and I
6 asked him about that and he would continue to
7 tell me not to worry about it.

8 Q. Was he calling you before he would
9 decide to purchase a stock like Global Net or
10 something of that sort and would he call you
11 before he decided to sell a stock?

12 A. No.

13 Q. How would you even have a know or find
14 out about the status of your account?

15 A. By calling him up and asking him what
16 was happening with the stock or the statement
17 at the end of the month but -- or right away
18 when these accounts weren't making money, then
19 I was -- I called him constantly to find out.
20 I wouldn't know from one day to the next if I
21 was making money or losing money but the
22 pattern was was that I would be constantly
23 losing money.

24 Q. Were you familiar before you had
25 transferred your account over there to a stock

1 commissions?

2 A. Do I remember when?

3 Q. Was it around the time you opened your
4 account?

5 A. Yes.

6 Q. During the subsequent years that he was
7 your broker, did you discuss commissions with
8 them?

9 A. No, because I thought I was being
10 charged the minimum which might be \$100 or \$50.

11 Q. Now, Mr. Russo mentioned in his opening
12 statement that there was a couple times when
13 you sent in some additional money -- let me
14 back up again, I'm sorry, withdraw that.

15 Did there come a time, if you recall,
16 after you came to Joseph Stevens that your
17 account was basically wiped out, no longer had
18 any money in it, if you recall?

19 A. Yes, and I can't recall the date and I
20 asked Ross what are we going to do and -- or --
21 and he said, well, we need \$60,000, I said,
22 Ross, you lost all this money and I don't have
23 money to be investing, but he finally convinced
24 me to send the money and I sent the money.

25 Q. And what did he tell you he was going

1 A. Yes, that was my house.

2 Q. Do you still own that house?

3 A. No.

4 Q. When did you sell that house?

5 A. The year 2000 when I sold the income
6 property.

7 Q. So you sold both at the same time?

8 A. Around the same time.

9 Q. And how much did you receive for the
10 house when you sold, it?

11 A. 245,000.

12 Q. And what did you do with that house?

13 A. I put it in the bank.

14 Q. Put it in the bank, so do you recall
15 establishing the Cikanek living trust in or
16 about September of 2000?

17 A. Yes, I believe it was September 8th,
18 2000.

19 Q. So subsequent to September 8th, 2000,
20 do you have a recollection of depositing
21 \$387,000 into the bank, the proceeds of the two
22 sales?

23 A. Yes.

24 Q. Am I correct that at that time you also
25 had about \$30,000 in a money market account at

1 brokerage firm?

2 A. Yes.

3 Q. What is the name of that brokerage
4 firm?

5 A. I can't recall.

6 Q. Do you still have \$50,000 with that
7 brokerage firm or more?

8 A. I don't know. I'd have to look up the
9 records.

10 Q. But you do have the records, huh?

11 A. The records for what?

12 Q. For the company that took over New Vene
13 which you had in 2000 \$50,000?

14 A. I'd have to check my tax returns.

15 Q. You have to check your tax returns for
16 what, sir?

17 A. To find out if I still had New Vene.

18 Q. You don't know as you sit here today
19 whether you still have an investment?

20 A. No, I don't.

21 Q. And you don't know how much that
22 investment might be worth?

23 A. No.

24 Q. When you established the Cikanek trust,
25 the schedule said you had approximately

1 \$825,000 with Silver Capital Group, is that
2 account that used to be in your name David
3 Cikanek -- Cikanek, I'm sorry, David Cikanek
4 individually?

5 A. At Silver Capital?

6 Q. Yes.

7 A. Yes.

8 Q. And so am I correct that that money was
9 in your name and then subsequently by act of
10 this trust was converted into a trust asset?

11 A. Yes.

12 Q. How much was the individual David
13 Cikanek account worth at the time that you put
14 it into the trust?

15 A. The trust, how much was the trust
16 worth?

17 Q. How much was the David M. Cikanek
18 individual account at Silver Capital worth at
19 the time that you put it into the trust?

20 A. 788,000 and whatever.

21 Q. And did you understand when you formed
22 the trust that you were moving assets out of
23 your individual name into a separate entity?

24 A. Into the trust.

25 Q. Did you understand that was a separate

1 A. Yes.

2 Q. What did you do when you received a
3 confirmation for your trade?

4 A. I looked at the value of the stock and
5 the amount of money.

6 Q. Why were you looking at that?

7 A. Because I was concerned I was earning
8 money or losing money.

9 Q. Well, I'm not talking about account
10 statements, sir, I'm talking about individual
11 confirmations for every trade?

12 A. Well, I was sent -- aware of what Ross
13 was doing with my money and I wanted to see,
14 you know, what -- where the money was going,
15 what stock.

16 Q. So let's rewind a second, sir, did you
17 or did you not receive a confirmation for every
18 trade that was done in your account?

19 A. Yes.

20 Q. And when you got those confirmations,
21 what did you do with them?

22 A. I looked at them and then I would call
23 Ross and ask him about the trade.

24 Q. And you understood when you received
25 those confirmations, did you not, sir, that a

1 an account at LCP, am I correct that you saw
2 continuing losses on a monthly basis as you had
3 received these statements?

4 A. Correct.

5 Q. What did you do to stop the losses
6 during the time period while you were at LCP?

7 A. I felt there was nothing that I could
8 do and so I would call Ross and he would, once
9 again, reassure me not to worry, the money
10 would come back.

11 Q. How much money had you lost by the time
12 Ross was leaving LCP?

13 A. I lost most of the 500,000 in the
14 Global Net.

15 Q. So you lost in excess of 500,000 --
16 withdraw it, I'm sorry, that's a
17 mischaracterization.

18 You had lost in Global Net, had you
19 lost any other stocks?

20 A. I probably did, but I can't recall what
21 the stocks were.

22 Q. If I were to tell you that you lost
23 approximately 600,000 while you were at LCP,
24 would you think that that was incorrect?

25 A. I don't know if it's correct.

1 Q. Let's assume for the moment --
2 withdrawn.

3 Would you say you lost at least 400,000
4 while you were at LCP?

5 A. I don't know for sure.

6 Q. Do you know whether it was hundreds of
7 thousands that you lost at LCP?

8 A. Yes.

9 Q. After having lost hundreds of thousands
10 at LCP, why is it that you followed Mr. Inserra
11 to Joseph Stevens & Company?

12 A. I followed him because he asked me to.
13 He said he would get my money back for me.

14 Q. At any point did you tell Joseph
15 Stevens that you were dissatisfied with the
16 stock that Mr. Inserra had been recommending to
17 you because at LCP you had lost several hundred
18 thousand dollars?

19 A. No.

20 Q. In fact, when you got to Joseph
21 Stevens, you filled out a new account form,
22 didn't you?

23 A. Yes.

24 Q. And on that new account form, you
25 represented that you had a million in net

1 would send it overnight, then he would send
2 a paid FedEx envelope inside there and he
3 said sign this and send it right back.

4 BY MR. RUSSO:

5 Q. But you also signed the form which said
6 speculation, didn't you, sir, as your
7 investment objective?

8 A. No.

9 Q. Ross hadn't checked that?

10 A. No.

11 Q. Are you sure?

12 A. No.

13 Q. You're not sure?

14 A. I'm not sure.

15 Q. Did you do anything on that form to
16 indicate that your investment objective was
17 let's say conservative, did you check
18 conservative on that form?

19 A. I can't recall.

20 Q. Did you make any corrections on that
21 form?

22 A. I can't recall. I don't even recall
23 the form.

24 Q. Did you sign a margin agreement?

25 A. Yes, Ross asked me to -- I asked Ross

1 what is margin and he said this is just in case
2 there is a trade that we have to make quickly
3 and that I wouldn't be charged any money. He
4 wouldn't use it, but he would have it.

5 Q. But you received with that margin
6 agreement the standard JSC packet, correct,
7 that disclosed the risks?

8 A. I can't recall.

9 Q. And where you signed the margin
10 agreement specifically above the signature
11 block that you had read the disclosure
12 regarding margin and you were prepared to
13 accept the risks, didn't it?

14 A. I can't recall.

15 Q. But you do recall signing the agreement
16 and sending it back to Joseph Stevens, correct?

17 A. Yes, because I would have had to
18 because he used it at some point without my
19 knowledge.

20 Q. And you recognize that Joseph Stevens
21 and Bank of New York would have never opened a
22 margin account for you had you not given your
23 signature on that piece of paper, correct?

24 A. Correct.

25 Q. And you understand when you sign a

1 Q. Does that mean that you always
2 understood that the amount or the value of your
3 account could be affected by a market downturn?

4 A. Not my personally, just that it was a
5 question I asked him.

6 Q. Why did you ask him that question?

7 A. Because if the market goes down, it
8 could affect my stock.

9 Q. You were knowledgeable enough in let's
10 say April or May of 2000 to understand that?

11 A. Yes.

12 Q. Did you have a margin account at LCP?

13 A. No.

14 Q. Are you sure?

15 A. Yes.

16 Q. Now, you said that the first time --
17 what was your net worth at the time you
18 transferred your account to Joseph Stevens in
19 November of 2000?

20 A. Including the money at Joseph Stevens?

21 Q. Yes.

22 A. Three to \$400,000, I couldn't tell
23 you -- I couldn't tell you my net worth.

24 Q. You told us that you sold one of your
25 houses for 142,000, right?

1 A. Uh-huh.

2 Q. And that you sold another house for
3 245,000, that you had \$30,000 in a money market
4 account, that you had \$50,000 in New Vene, that
5 you had \$10,000 at Kemper and that you had
6 another \$50,000 at something called Stein Roe
7 Services, Inc., now when I add that up, I get
8 approximately \$425,000, in addition to that you
9 also had your Joseph Stevens account, correct,
10 the money that you transferred over to Joseph
11 Stevens; is that right?

12 A. Yes.

13 Q. You also had whatever was in your IRA?

14 A. Yes.

15 Q. There's a lot more than 300, right?

16 MR. SUGARMAN: He just said 400 and
17 some thousand dollars.

18 BY MR. RUSSO:

19 Q. It was a lot more than 400, wasn't it?

20 A. I can't tell you.

21 Q. Was it a million dollars?

22 A. A million?

23 Q. Yes.

24 A. When I transferred to Joseph Stevens?

25 Q. Yes, was your net worth a million

1 dollars?

2 A. No.

3 Q. So you recognized that when you signed
4 a new account form and it said \$1 million on it
5 that Joseph Stevens may have been mislead by
6 that, correct?

7 A. Correct.

8 Q. And at that time may I ask you how much
9 you were making on an annual basis?

10 A. At that time? .

11 Q. Yes, in 2000 how much did you make in
12 2000?

13 A. I'm guessing I would say around 50,000.

14 Q. I'll represent to you and your tax
15 return, I'll show it to you if you want, shows
16 on line 33 \$68,601 and it shows wages, salaries
17 and tips of \$18,000, can you explain to us
18 where you got that from?

19 A. No, I can't.

20 Q. It also shows total pension and
21 annuities of \$63,211, is that Social Security
22 plus your pension?

23 A. I would say, no, it's not. If that's
24 what it indicates on my tax return, then that
25 would be my -- but the --

1 A. Pardon me?

2 MR. RUSSO: Could you read the question
3 back, please?

4 (Record read as requested.)

5 BY THE WITNESS:

6 A. I don't know. I can't -- I can't
7 recall.

8 BY MR. RUSSO:

9 Q. Why was Ross Inserra continuing to
10 solicit you?

11 MR. SUGARMAN: Objection, how would he
12 know why Ross Inserra was soliciting him?

13 MR. RUSSO: I'll ask it differently.

14 BY MR. RUSSO:

15 Q. Do you know why Ross Inserra was
16 continuing to solicit you?

17 A. No, but he -- we were on a friendly
18 basis, so-called friendly basis, and I don't --
19 I just wanted my money back and he said he
20 could get it and the people he talked with and
21 dealt with were experts and they would know and
22 they were -- they sometimes being part of the
23 company or the investment that he was investing
24 in.

25 Q. Did you give him any money after he

1 left Joseph Stevens to invest?

2 A. Yes, the money -- the money from Joseph
3 Stevens.

4 Q. So after he left Joseph Stevens and he
5 was no longer associated with them, you gave
6 him additional money to invest?

7 A. Yes.

8 Q. Where was that?

9 A. Where?

10 Q. Yeah, what did he do with that money?

11 A. He invested it.

12 Q. In what?

13 A. I can't recall right now at this
14 moment.

15 Q. So at the time that Ross Inserra left
16 Joseph Stevens, you understood that Ross had
17 been indicted for securities fraud, correct?

18 A. One moment please, I just remembered
19 what he invested it in. The name of the
20 company was HealthNostics. The name has been
21 changed though to another name which I don't
22 know what it is.

23 Q. Was that a private placement, sir?

24 A. I don't know.

25 Q. Did you have to fill out a

1 questionnaire that asked you about your net
2 worth and your investment experience?

3 A. I can't recall.

4 Q. Where was that -- where was
5 HealthNostics, in other words, where was the
6 stock held?

7 A. Where was it held?

8 Q. Yes.

9 A. It was a private placement I guess or
10 on a pink sheet, whatever it was, but it was
11 restricted. They stock -- sent me stock
12 certificates.

13 Q. You actually received a physical stock
14 certificate?

15 A. Yes.

16 Q. And do you know if Ross Inserra made a
17 commission when he was selling you this stock
18 after he left Joseph Stevens?

19 A. No, I don't know.

20 Q. Did you have that same understanding
21 with him that it would be minimum commissions
22 at that time?

23 A. We didn't speak about a minimum
24 commission.

25 Q. Ever?